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THE QUESTION OF CONSCIENTIOUS OBJECTION TO MILITARY SERVICE

Written statement submitted by the Transnational Radical Party, a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[19 February 1998]

Conscientious objection to military service in the Russian Federation

1. The right to conscientious objection to military service as a fundamental human right is recognized and guaranteed at international level, in particular by the United Nations Human Rights Committee (General Comment No. 22 of 1993) (Commission on Human Rights resolution 1995/83 of 8 March 1995); (Document of CSCE Copenhagen Conference on the Human Dimension, of 29 June 1990); by the Council of Europe (Recommendation No. R (87) 8 of the Committee of Ministers to Member States Regarding Conscientious Objection to Compulsory Military Service, of 9 April 1987); in the Rodata Report, adopted by Parliamentary Assembly of Council of Europe, (document 6752 of 29 January 1993); by the European Parliament (resolutions of 13 October 1989 and 11 March 1993; recommendation of 18 January 1984).

2. In the Russian Federation the conscientious objection right is guaranteed by the currently valid Constitution which was adopted on 12 December 1993: "The citizen of the Russian Federation whose convictions and faith are at odds with military service and also in other cases stipulated by the federal law shall have the right to the substitution of an alternative civil service for military service" (article 59.3). According to the actual federal law on military conscription and military service, all men between 18 and 27 who do not have any reason for respite, are subjected to obligatory military service. The federal law on alternative civil service whose draft has been adopted by the State Duma in the first lecture already in December 1994, has not yet been approved. Therefore, there is no legal procedure nowadays for granting alternative civilian service instead of a military one for conscientious objectors. Adopting and introducing such a law was among the obligations assumed by the Russian Federation on its adhesion to the Council of Europe in February 1996.

3. At the same time, according to its article 15, "The Constitution of the Russian Federation shall have supreme legal force and direct effect, and shall be applicable throughout the entire territory of the Russian Federation". Therefore, the conscientious objection right guaranteed by the Constitution represents from the juridical point of view an inalienable right of citizens even in the absence of a special federal law on alternative civilian service.

4. In practice, citizens' right on conscientious objection is being widely contested by military commissariats (territorial bodies of the Defence Ministry responsible for military call-up) and by recruitment commissions, formed by local civil authorities two times per year for the period of conscription campaigns. In violation of the Constitution, recruitment commissions take decisions to recruit conscientious objectors. Conscientious objectors whose rights have been violated in this way, may appeal to the courts against these decisions. However, the courts adjudge mostly in favour of recruitment commissions and against the conscientious objectors, deciding not on the basis of the constitutional norms but on the traditional idea of "holy duty of every real man". Such anti-constitutional decrees are taken by the courts of various levels, including the Supreme Court of the Russian Federation. Thus, on 23 November 1997, Alexey Antropov, from the Republic of Kabardino-Balkaria, received the answer for his appeal from the Supreme Court, where it has been stated that the respective norm of the Constitution has no

direct implementation in the absence of federal law on alternative civilian service. In other cases, the courts explain their negative decisions by stating that the applicant "did not manage to prove his convictions in an appropriate way", although article 29.3 of the Russian Constitution states clearly: "No one may be coerced into expressing one's views and convictions or into renouncing them".

5. According to article 25 of the federal law on military conscription and military service, in the case of appealing to the court against a decision of the recruitment commission, the implementation of this decision should be suspended until the last instance court's decision on the matter. In the majority of cases, however, military commissariats act on an illegal basis, violating the law: being assisted by the militia, they bring by force and intimidation to barracks those conscientious objectors who are waiting for a court's decision on their appeal.

6. Alexander Yakovenko who was waiting for a court's decision on his appeal, was kidnapped, on 15 December 1996, by the officers of miliary commissariat, beaten and brought by force to the recruitment point for dispatching to a military unit. Only after intervention of representatives of the Transnational Radical Party and journalists, the military released him. The same attempts were undertaken during 1997 against Vadim Vatutin, Ruslan Bikbov, Alexey Bykov in Moscow, Nikolay Mozzhukhin in Yaroslavl region. In certain cases, when serious violations of law become widely known to the public - like in Yakovenko's case - military authorities undertake some measures against the officers.

7. Thus, the military prosecutor of Moscow military district has opened the criminal lawsuit against illegal actions of the officers of Cheremushkinsky military commissariat of Moscow against Alexander Yakovenko. This lawsuit however has not yet been submitted to the court. One can assume that such a practice is widely spread, especially in provinces where human rights organizations are absent and cannot therefore make violations of legal rights of conscientious objectors known to the public.

8. The exact number of conscientious objectors in Russia is unknown, but it is sure there are thousands of them. According to the information from the Defence Ministry of the Russian Federation, only during the last year's spring conscription campaign (from April to June 1997) there were 675 formal conscientious objection statements submitted to the recruitment commissions. In the Moscow office of the Transnational Radical Party, where conscientious objectors appealing for help are being registered, there are 85 conscientious objection statements filed (on 10 February 1998).

9. Since 1996, military commissariats act on the basis of a secret directive of the Defence Ministry, which prescribes to the military commissariats to accept conscientious objection statements and to dispatch conscientious objectors to serve military service in units, where the service is not associated with "holding and using arms", giving them respective written guarantee if necessary. From the juridical point of view, however, this directive does not solve the problem of conscientious objection, because military service in any troops assumes obligatory military oath, obeying orders and military training. In practice, the conscripts who agreed to be

dispatched to such troops find themselves serving military service in so-called "construction battalions" in conditions much worse than any other military service, being subjected to torture and ill-treatment. For the same period of spring conscription campaign 1997, 50 conscripts out of 675 who submitted their conscientious objection statements, were sent for military service in such troops. However, the applicants do not always find themselves exactly in the troops where they have been supposedly dispatched according to the decision of the recruitment commission.

10. In many cases conscientious objectors have been criminally prosecuted according to article 328 of the Criminal Code of the Russian Federation ("evading military or alternative civilian service"). Before 1 January 1997, the old Criminal Code was valid and implemented, with its article 80 ("evading the ordinary call-up to the military service").

11. Vadim Gesse (Noginsk, Moscow region) declared in December 1995 to the recruitment commission his intention to serve an alternative civilian service instead of a military one. However, he got the order to join the army. After he did not appear at the recruitment point, on 25 January 1996 he was arrested, spent 40 days in prison and was released only after interventions of Amnesty International, Transnational Radical Party and a press campaign. On 13 May 1996 he was fully acquitted by the City Court of Noginsk.

12. Alexander Seregin, a Hare Krishna believer from Moscow, declared his conscientious objection to the recruitment commission in spring 1996, demanding the alternative civilian service. After he did not arrive at the recruitment point, the criminal lawsuit has been opened against him. On 24 October 1996, the Cheremushkinsky inter-municipal court of Moscow sentenced him conditionally to two years imprisonment. However, on 24 December 1996, Moscow City Court cancelled this sentence and acquitted Alexander Seregin.

13. Viktor Semenov (Noginsk, Moscow region) was arrested on 18 November 1997, and spent three days in prison. During this time, the vice prosecutor of Noginsk district, Mrs. Elena Frolova, extorted Semenov's consent to serve in the military, stating that he had "no other choice - either army or prison". Nowadays Viktor Semenov, although having been released, is still under investigation.

14. Vasily Bazhenov has been refused, on 4 April 1997, by Tushinsky inter-municipal court of Moscow in complying with his appeal against the recruitment commission which ignored his conscientious objection and decided to send him into the army. On 2 June 1997, Moscow City Court confirmed Tushinsky Court's decision. Since Bazhenov continued to insist on his constitutional right on conscientious objection, on 5 January 1998, Tushinsky prosecutor of Moscow opened a criminal lawsuit against him according to article 328 of the Criminal Code. Nowadays Vasily Bazhenov is under investigation.

15. Denis Yazykov is under investigation for the same accusation of "evading military service" already more than one year and a half, in Yekaterinburg. After his conscientious objection statement, the criminal lawsuit according to

article 328 of the Criminal Code has been opened against him. This lawsuit has not yet been submitted to the court and Yazykov is still under investigation.

16. Also a criminal lawsuit according to article 328 has been opened in October 1997 against Alexander Borodin (Moscow). He didn't arrive at the barracks after being sent there in spite of his declared conscientious objection and demand for substitution of military service for alternative civilian service. Nowadays the Alexander Borodin's case is being examined by Golovinsky Intermunicipal Court of Moscow.

17. Vitaly Anikeyev, from Novosibirsk, after having received the order to arrive for dispatching to the army, formally declared his conscientious objection and demanded alternative civilian service. He did not obtain any answer and on 18 November 1997 appealed to the court against illegal actions of the recruitment commission. However, on the same day, the criminal lawsuit according to article 328 was opened against him. Now he is waiting for a trial.

18. Igor Smorodin (Sterlitamak, Bashkir Republic) demanded in December 1996 the recruitment commission for the substitution of military service for the alternative civilian one. He did not obtain any answer and appealed to the court. The lawsuit has not been examined for a long time. On 5 November 1997, before any court's decision on the matter, the recruitment commission made a new decision to send Smorodin to military service. On 21 November 1997, the City Court of Sterlitamak decided in absentia to reject Smorodin's appeal. The court had not even informed Igor Smorodin about its appointed session. On 22 December 1997, Igor Smorodin was informed about opening the criminal lawsuit against him on the accusation of "evading military service" (article 328 of the Criminal Code). On 3 February 1998, he was arrested and placed into the prison where he faced pressure and intimidations forcing him to serve in military. On 6 February 1998 he was released, but the investigation continues.

19. In Novosibirsk at least two other conscientious objectors have been sentenced in 1997 to financial punishment for "evading military service".

20. At least one conscientious objector is nowadays imprisoned, being sentenced last year in Novosibirsk to six months imprisonment according to article 328 of the Criminal Code.

21. It is necessary to expect, however, that in reality the number of sentenced and/or imprisoned conscientious objectors is much higher, because only during the period from April to June 1997, the prosecutors have opened 3,000 criminal lawsuits according to article 328 of the Criminal Code.

22. It is therefore necessary to stress that serious and systematic violations of the fundamental right on conscientious objection are committed by the Russian Federation authorities against thousands of young Russian citizens. It represents a flagrant violation of both international obligations of the Russian Federation and its own Constitution.

23. The Transnational Radical Party appreciates the Commission's attention to the violations of conscientious objection right in the Russian Federation. We believe that the Commission on Human Rights should recommend that the General Assembly and the Secretary-General take urgent action to put an end to the violations of this fundamental right in the Russian Federation. We, therefore, call upon the Commission to adopt a strong resolution on conscientious objection at this session.